PHILLIPS PETROLEUM CO.

IBLA 79-17 Decided December 22, 1978

Appeal from decision of the Idaho State Office, Bureau of Land Management, rejecting oil and gas lease offers I-10196 through I-10199.

Affirmed as modified, cases remanded.

1. Oil and Gas Leases: Applications: Generally--Oil and Gas Leases: Rentals

   Where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after February 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to effective date of the regulation.

2. Evidence: Presumptions

   There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties.

3. Applications: Priority--Oil and Gas Leases: Applications: Generally

   An over-the-counter oil and gas lease offer, properly rejected because of a failure to meet the requirements of the regulations, but which rejection did not become final because an appeal was timely filed, may be considered as having priority as of the date the defect was cured.

APPEARANCES: R. A. Wolgast, Attorney in Fact, for appellant.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Phillips Petroleum Co. appeals from the September 15, 1978, decision of the Idaho State Office, Bureau of Land Management (BLM), rejecting noncompetitive oil and gas lease offers I-10196, I-10197, I-10198, and I-10199 for failure to submit the additional rental and stipulations within the time provided.

Appellant filed over-the-counter offers for these leases in December 1975. It submitted the first year's rental with the offers, based on the rental rate of 50 cents per acre then required by the regulation. On January 5, 1977, an amendment of the regulation, 43 CFR 3103.3-2, was published in the Federal Register raising the annual rental to $1 per acre.

On August 9, 1978, appellant received a notice from BLM informing it additional rental was due and special stipulations required within 30 days from receipt of the notice before the leases could issue. The notice further provided, in accordance with 43 CFR 3111.1-1(d), that if the additional rental and signed stipulations were not received within the time allowed, the lease offers would be rejected. The decision appealed from then issued when BLM failed to receive the rental and stipulations.

In its notice of appeal, appellant alleges that it executed the stipulations on August 16, 1978, and deposited them with checks for the required amount in the United States mail "well within the thirty (30) day period allowed."

[1] Although appellant met the rental requirements of the regulations at the time the offer was filed, the required rental was increased prior to issuance of the lease. Therefore, it was proper for the BLM office to require the additional rental under penalty of rejection of the offer for failure to comply. We have held many times that where the Department, through a duly promulgated regulation, has increased the rental rate on all noncompetitive oil and gas leases issued after February 1977, the increased rate is applicable to leases issued subsequent to that date where the over-the-counter offer was filed prior to the effective date of the regulations. E.g., Tipperary Oil And Gas Corp., 35 IBLA 120 (1978); Altex Oil Co., 32 IBLA 44 (1977).

[2] There is a legal presumption of regularity which supports the official acts of public officers and the proper discharge of their official duties. Donald E. Jordan, 35 IBLA 290 (1978). The BLM records show no receipt of the additional rental or signed stipulation within the time provided. Appellant has presented no evidence other than a copy of the stipulations dated August 16, 1978, and its agent's assertion that the payment and stipulations were timely mailed. This is not sufficient to rebut the presumption of administrative regularity.

[3] This appeal suspended the BLM decision rejecting the offers. Appellant submitted the rentals and copies of the signed stipulations with its notice of appeal. They were received in the State Office October 2, 1978. An over-the-counter offer, properly rejected because of a failure to meet the requirements of the regulations, may be considered as having priority as of the date the defect was cured where, as here, the curative action was taken during an appeal from the rejection. Emerald Oil Co., 31 IBLA 119 (1977); James H. Scott, 18 IBLA 55 (1974). Therefore, subject to any intervening offers, and, if all else be regular, these offers may be considered as having priority as of October 2, 1978.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision is affirmed insofar as it found the offers defective then, but it is modified to permit consideration of the offers with priority when the defects were cured and the cases are remanded to the State Office for appropriate action.

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Joan B. Thompson
Administrative Judge

We concur:

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Douglas E. Henriques
Administrative Judge

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Frederick Fishman
Administrative Judge